

AMENDED IN SENATE JUNE 27, 2011

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 687

Introduced by Assembly Member Fletcher
(Coauthor: Assembly Member Beth Gaines)

February 17, 2011

An act to amend Sections 7663, 7664, 7666, 7667, 9003, and 9102 of, and to add Sections 7913, ~~8623~~, 8601.5, 8704.5, and 9213 to, the Family Code, *and* to amend Section 102635 of the Health and Safety Code, ~~and to amend Section 396 of, and to add Section 398 to, the Welfare and Institutions Code, relating to adoption.~~ *relating to adoption.*

LEGISLATIVE COUNSEL'S DIGEST

AB 687, as amended, Fletcher. Adoption.

Existing

(1) *Existing* law, the Uniform Parentage Act, among other provisions, provides for the termination of parental rights in adoption proceedings. Existing law requires an inquiry of the mother and any other appropriate person in an effort to identify the natural father of a child, and specifies the agencies that may conduct the inquiry.

This bill would authorize a licensed private adoption agency, *at the option of the board of supervisors*, to conduct the inquiry ~~in the case of~~ *in* a stepparent adoption.

(2) *Existing* law requires notice of proceedings relating to adoption and the termination of parental rights to be given to an alleged father in accordance with specified provisions of law.

This bill would revise and consolidate those provisions.

(3) *The Interstate Compact on the Placement of Children, which has been adopted in this state, authorizes and governs the interstate placement of children.*

This bill would delegate certain authority to a licensed private adoption agency that has provided adoption-related services to a birth parent or prospective adoptive parent, including the authority to determine whether the placement shall be made pursuant to the Interstate Compact on the Placement of Children.

(4) *The bill would authorize a court to issue an order of adoption and cause it to apply to an earlier date if it would serve public policy and the best interests of the adoptee, subject to certain requirements.*

~~Existing~~

(5) *Existing law requires the written consent of the parent or parents of a child to be filed prior to the time the adoption request is filed, and requires the written consent to be witnessed by certain persons.*

~~The~~

This bill would allow the written consent to be filed simultaneously with the adoption request and would also authorize a representative of a licensed adoption agency to serve as a witness. ~~The bill would expand the list of persons that a clerk may notify when the document is filed to include a qualified court investigator.~~

(6) *Existing law provides for the licensure and certification of family day care homes and foster family agencies that provide foster care services.*

This bill would provide that a foster care license or certification would not be required for placement, for up to 30 days, of a nondependent child who is relinquished for adoption to a licensed private adoption agency if the child is placed in the care of a prospective adoptive parent who meets specified criteria.

(7) *Existing law requires an action or proceeding to vacate, set aside, or otherwise nullify an order of adoption based on fraud to be commenced within 3 years after entry of the order.*

This bill would instead require that the action or proceeding be commenced within 3 years after entry of the order or within 90 days of discovery of the fraud, whichever is earlier.

(8) *Existing law governs the procedure for adult adoption, and authorizes a prospective parent and the proposed adoptee to file a petition for approval of an adoption agreement with the court in specified counties.*

This bill would specify the counties in which residents and nonresidents of the state may file a petition for adult adoption with the court.

~~Existing~~

(9) ~~Existing~~ law requires the State Registrar to establish a new birth certificate upon receipt of a report of adoption for a child or a readoption order.

This bill would require the State Registrar to issue the new birth certificate within 120 days of receipt of a court report or adoption or readoption order, or within 90 days of receipt of a request to expedite from an adoptive parent of the child, whichever is later. The bill would establish a fee of \$150 for an expedited birth certificate after adoption or readoption.

~~The Interstate Compact on the Placement of Children, which has been adopted in this state, authorizes and governs the interstate placement of children.~~

~~This bill would authorize a licensed private adoption agency to serve as the designated administrator for any interstate placement of a nondependent child, as specified.~~

~~Existing law provides for the licensure and certification of family care homes and foster family agencies that provide foster care services.~~

~~The bill would provide that a foster care license or certification would not be required for placement of a nondependent child who is relinquished for adoption to licensed adoption agency if the child is placed in the care of prospective adoptive parents who meet specified criteria. The bill would declare that it is the policy of the state that voluntary and safe alternatives to foster care should be encouraged and supported.~~

~~The bill would revise and consolidate provisions relating to the notice required to be given to an alleged natural father prior to an adoption proceeding.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7663 of the Family Code is amended to
2 read:

1 7663. (a) In an effort to identify the natural father, *the court*
2 *shall cause* inquiry ~~shall~~ to be made of the mother and ~~any one~~
3 other appropriate person by any of the following:

4 (1) The State Department of Social Services.

5 (2) A licensed county adoption agency.

6 (3) The licensed adoption agency to which the child is to be
7 relinquished.

8 (4) In the case of a stepparent adoption, ~~the licensed private~~
9 ~~adoption agency that is performing the investigation pursuant to~~
10 ~~Section 9001, if applicable. In the case of a stepparent adoption~~
11 ~~in which a licensed private adoption agency is not performing the~~
12 ~~investigation pursuant to Section 9001, the board of supervisors~~
13 ~~shall have the option to assign those inquiries to a licensed county~~
14 ~~at the option of the board of supervisors, a licensed county~~ adoption
15 agency, the county department designated by the board of
16 supervisors to administer the public social services program, or
17 the county probation department.

18 (b) The inquiry shall include all of the following:

19 (1) Whether the mother was married at the time of conception
20 of the child or at any time thereafter.

21 (2) Whether the mother was cohabiting with a man at the time
22 of conception or birth of the child.

23 (3) Whether the mother has received support payments or
24 promises of support with respect to the child or in connection with
25 her pregnancy.

26 (4) Whether any man has formally or informally acknowledged
27 or declared his possible paternity of the child.

28 (5) The names and whereabouts, if known, of every man
29 presumed or alleged to be the father of the child, and the efforts
30 made to give notice of the proposed adoption to each man
31 identified.

32 (c) The agency that completes the inquiry shall file a written
33 report of the findings with the court.

34 SEC. 2. Section 7664 of the Family Code is amended to read:

35 7664. (a) If, after the inquiry, the natural father is identified
36 to the satisfaction of the court, or if more than one man is identified
37 as a possible father, notice of the proceeding shall be given in
38 accordance with Section 7666. If any alleged natural father fails
39 to appear or, if appearing, fails to claim parental rights, his parental
40 rights with reference to the child shall be terminated.

1 (b) If the natural father or a man representing himself to be the
2 natural father claims parental rights, the court shall determine if
3 he is the father. The court shall then determine if it is in the best
4 interest of the child that the father retain his parental rights, or that
5 an adoption of the child be allowed to proceed. The court, in
6 making that determination, may consider all relevant evidence,
7 including the efforts made by the father to obtain custody, the age
8 and prior placement of the child, and the effects of a change of
9 placement on the child.

10 (c) If the court finds that it is in the best interest of the child that
11 the father should be allowed to retain his parental rights, the court
12 shall order that his consent is necessary for an adoption. If the
13 court finds that the man claiming parental rights is not the father,
14 or that if he is the father it is in the child's best interest that an
15 adoption be allowed to proceed, the court shall order that the
16 consent of that man is not required for an adoption. This finding
17 terminates all parental rights and responsibilities with respect to
18 the child.

19 SEC. 3. Section 7666 of the Family Code is amended to read:

20 7666. (a) Except as provided in subdivision (b), notice of the
21 proceeding shall be given to every person identified as the natural
22 father or a possible natural father in accordance with the Code of
23 Civil Procedure for the service of process in a civil action in this
24 state at least 10 days before the date of the proceeding, except that
25 publication or posting of the notice of the proceeding is not
26 required. Proof of giving the notice shall be filed with the court
27 before the petition is heard.

28 (b) Notice to a man identified as or alleged to be the natural
29 father shall not be required under any of the following
30 circumstances:

31 (1) The man's relationship to the child has been previously
32 terminated or determined not to exist by a court.

33 (2) The alleged or presumed natural father has executed a written
34 form to waive notice, deny his paternity, relinquish the child for
35 adoption, or consent to the adoption of the child.

36 (3) The whereabouts or identity of the alleged natural father are
37 unknown or cannot be ascertained.

38 ~~(4) The alleged natural father has failed to bring an action to~~
39 ~~establish his parental rights within 30 days of either of the~~
40 ~~following, whichever is later:~~

1 ~~(A) The date of the child's birth.~~

2 ~~(B) The date that the alleged natural father was served with a~~
3 ~~written notice informing him that he is or could be the father of~~
4 ~~the child to be adopted, and that his parental rights could be~~
5 ~~terminated without further notice if he fails to bring an action for~~
6 ~~the purpose of declaring the existence of the father and child~~
7 ~~relationship pursuant to subdivision (c) of Section 7630 within 30~~
8 ~~days of service of the notice or the birth of the child, whichever is~~
9 ~~later.~~

10 ~~(4) The alleged father has been served with written notice of~~
11 ~~his alleged paternity and the proposed adoption, and he has failed~~
12 ~~to bring an action pursuant to subdivision (c) of Section 7630~~
13 ~~within 30 days of service of the notice or notice of the birth of the~~
14 ~~child, whichever is later.~~

15 SEC. 4. Section 7667 of the Family Code is amended to read:

16 7667. (a) Notwithstanding any other provision of law, an action
17 to terminate the parental rights of a father of a child as specified
18 in this part shall be set for hearing not more than 45 days after
19 filing of the petition, except as provided in subdivision (c).

20 (b) The matter so set shall have precedence over all other civil
21 matters on the date set for trial, except an action to terminate
22 parental rights pursuant to Part 4 (commencing with Section 7800).

23 (c) The court may dispense with a hearing and issue an ex parte
24 order terminating parental rights if any of the following apply:

25 (1) The identity or whereabouts of the father are unknown.

26 (2) The alleged father has validly executed a waiver of the right
27 to notice or a waiver or denial of paternity.

28 (3) The alleged father has been served with written notice of
29 his alleged paternity and the proposed adoption, and he has failed
30 to bring an action pursuant to subdivision (c) of Section 7630
31 within 30 days of service of the notice or the birth of the child,
32 whichever is later.

33 SEC. 5. Section 7913 is added to the Family Code, to read:

34 7913. (a) *When a full service licensed private adoption agency*
35 *has provided adoption-related services to a birth parent or*
36 *prospective adoptive parent, that agency is delegated the authority*
37 *to determine whether the placement shall or shall not be made*
38 *pursuant to the Interstate Compact on the Placement of Children,*
39 *and to sign the compact forms documenting that determination*
40 *and date of placement.*

1 (b) *For children entering California in independent adoptions,*
2 *prior to making a determination regarding placement and as soon*
3 *as feasible, the private adoption agency shall notify the appropriate*
4 *district office or delegated county adoption agency of the matter.*

5 (c) *This section shall not apply to a child who is a dependent*
6 *of the court or a child subject to a petition filed under Section 300*
7 *of the Welfare and Institutions Code.*

8 ~~7913. A licensed private adoption agency is authorized to serve~~
9 ~~as the designated administrator for the Interstate Compact on the~~
10 ~~Placement of Children for any interstate placement of a~~
11 ~~nondependent child, including, but not limited to, cases in which~~
12 ~~the licensed private adoption agency has provided adoption service~~
13 ~~provider services or relinquishment services to the placing birth~~
14 ~~parent or parents.~~

15 ~~SEC. 6. Section 8623 is added to the Family Code, to read:~~

16 ~~8623. A court may issue an order of adoption and declare that~~
17 ~~it shall be entered nunc pro tunc where it will serve public policy~~
18 ~~and the best interests of the adoptee.~~

19 ~~SEC. 6. Section 8601.5 is added to the Family Code, to read:~~

20 ~~8601.5. (a) A court may issue an order of adoption and declare~~
21 ~~that it shall be entered nunc pro tunc when it will serve public~~
22 ~~policy and the best interests of the child, such as cases where~~
23 ~~adoption finalization has been delayed beyond the child's 18th~~
24 ~~birthday due to factors beyond the control of the prospective~~
25 ~~adoptive family and the proposed adoptee.~~

26 ~~(b) The request for nunc pro tunc entry of the order shall be~~
27 ~~stated in the adoption request or an amendment thereto, and shall~~
28 ~~set forth specific facts in support thereof.~~

29 ~~(c) To the extent that a child's eligibility for any publicly funded~~
30 ~~benefit program is or could be altered by the entry of an order of~~
31 ~~adoption, the change in eligibility shall not be determined as of~~
32 ~~the nunc pro tunc date, but shall be determined as of the date of~~
33 ~~the adoption finalization hearing.~~

34 ~~SEC. 7. Section 8704.5 is added to the Family Code, to read:~~

35 ~~8704.5. (a) A foster care license or certification shall not be~~
36 ~~required for placement of a nondependent child who is relinquished~~
37 ~~for adoption to a licensed private adoption agency, if the child is~~
38 ~~placed in the care of prospective adoptive parents who have an~~
39 ~~approved adoption home study that meets the criteria established~~
40 ~~by the department for home studies conducted within the state.~~

1 (b) A placement made pursuant to subdivision (a) shall not
2 exceed 30 days. If an adoptive placement or application for foster
3 care licensure or certification does not occur within the 30 days,
4 the licensed private adoption agency shall place the child in a
5 home that is licensed or certified for foster care unless the
6 prospective adoptive parent or parents are appointed by the court
7 as the legal guardian or guardians of the child.

8 (c) During a placement made pursuant to subdivision (a), the
9 licensed private adoption agency shall conduct in-home
10 supervisory visits no less than once every 30 days.

11 ~~SEC. 7.~~

12 SEC. 8. Section 9003 of the Family Code is amended to read:

13 9003. (a) In a stepparent adoption, the consent of either or
14 both birth parents shall be signed in the presence of a notary public,
15 court clerk, probation officer, qualified court investigator,
16 authorized representative of a licensed adoption agency, or county
17 welfare department staff member of any county of this state. The
18 petitioner, petitioner's counsel, or person before whom the consent
19 is signed shall immediately file the consent with the clerk of the
20 court where the adoption request is filed. If the request has not
21 been filed at the time the consent has been signed, the consent
22 shall be filed simultaneously with the adoption request. Upon filing
23 of the ~~adopt~~ adoption request, the clerk shall immediately notify
24 the probation officer or, at the option of the board of supervisors,
25 the county welfare department of that county.

26 (b) If the birth parent of a child to be adopted is outside this
27 state at the time of signing the consent, the consent may be signed
28 before an authorized representative of an adoption agency licensed
29 in the state or country where the consent is being signed, a notary,
30 or other person authorized to perform notarial acts.

31 (c) The consent, when reciting that the person giving it is entitled
32 to sole custody of the child and when acknowledged before any
33 authorized witness specified in subdivision (a), is prima facie
34 evidence of the right of the person signing the consent to the sole
35 custody of the child and that person's sole right to consent.

36 (d) A birth parent who is a minor has the right to sign a consent
37 for the adoption of the birth parent's child and the consent is not
38 subject to revocation by reason of the minority.

39 ~~SEC. 8.~~

40 SEC. 9. Section 9102 of the Family Code is amended to read:

1 9102. (a) Except as provided in Section 9100, an action or
2 proceeding of any kind to vacate, set aside, or otherwise nullify
3 an order of adoption on any ground, except fraud, shall be
4 commenced within one year after entry of the order.

5 (b) ~~An~~ *Except as provided in Section 9100, an action or*
6 *proceeding of any kind to vacate, set aside, or nullify an order of*
7 *adoption, based on fraud, shall be commenced within three years*
8 *after entry of the order, or within 90 days of discovery of the fraud,*
9 *whichever is earlier.*

10 (e) ~~In an action to set aside an order of adoption, the court shall~~
11 ~~consider the best interests of the child.~~

12 (c) *In any action to set aside an order of adoption pursuant to*
13 *this section or Section 9100, the court shall first determine whether*
14 *the facts presented are legally sufficient to set aside the order of*
15 *adoption. If the facts are not legally sufficient, the petition shall*
16 *be denied. If the facts are legally sufficient, the court's final ruling*
17 *on the matter shall take into consideration the best interests of the*
18 *child, in conjunction with all other factors required by law.*

19 ~~SEC. 9.~~

20 *SEC. 10.* Section 9213 is added to the Family Code, to read:

21 9213. (a) ~~A~~ *Notwithstanding Section 9321, a person who is a*
22 *resident of this state may file a petition for adult adoption with the*
23 *court in any of the following:*

24 (1) The county in which the ~~petitioner~~ *prospective adoptive*
25 *parent* resides.

26 (2) The county in which the ~~adult~~ *proposed* adoptee was born
27 or resides at the time the petition was filed.

28 (3) The county in which ~~the~~ *an* office of the public or private
29 agency that placed the ~~adult~~ *proposed* adoptee for foster care or
30 adoption ~~while the adult adoptee was a minor child is located. as~~
31 *a minor or dependent child is located.*

32 (b) A petitioner who is not a resident of this state may file a
33 petition for adult adoption with the court in a county specified in
34 ~~either paragraph (2) or (3) or subdivision (a).~~ *paragraph (3) of*
35 *subdivision (a).*

36 ~~SEC. 10.~~

37 *SEC. 11.* Section 102635 of the Health and Safety Code is
38 amended to read:

39 102635. (a) A new birth certificate shall be established by the
40 State Registrar upon receipt of either of the following:

1 (1) A report of adoption from any court of record that has
2 jurisdiction of the child in this state, another state, the District of
3 Columbia, in any territory of the United States, or in any foreign
4 country, for any child born in California and whose certificate of
5 birth is on file in the office of the State Registrar.

6 (2) A readoption order issued pursuant to Section 8919 of the
7 Family Code.

8 (3) The State Registrar shall issue the new birth certificate within
9 120 days of receipt from the court of a court report of adoption or
10 readoption order, or within 90 days of receipt of a request to
11 expedite from an adoptive parent of the child, whichever is later.
12 The fee for issuance of an expedited birth certificate after adoption
13 or readoption shall be one hundred fifty dollars (\$150) and shall
14 be submitted with the request to expedite.

15 ~~SEC. 11. Section 396 of the Welfare and Institutions Code is~~
16 ~~amended to read:~~

17 ~~396. It is the policy of the state that foster care should be a~~
18 ~~temporary method of care for the children of this state, that children~~
19 ~~have a right to a normal home life free from abuse, that~~
20 ~~reunification with the natural parent or parents or another alternate~~
21 ~~permanent living situation such as adoption or guardianship is~~
22 ~~more suitable to a child's well-being than is foster care, that this~~
23 ~~state has a responsibility to attempt to ensure that children are~~
24 ~~given the chance to have happy and healthy lives; that voluntary~~
25 ~~and safe alternatives to foster care should be encouraged and~~
26 ~~supported; and that, to the extent possible, the current practice of~~
27 ~~moving children receiving foster care services from one foster~~
28 ~~home to another until they reach the age of majority should be~~
29 ~~discontinued.~~

30 ~~SEC. 12. Section 398 is added to the Welfare and Institutions~~
31 ~~Code, to read:~~

32 ~~398. A foster care license or certification shall not be required~~
33 ~~for placement of a nondependent child who is relinquished for~~
34 ~~adoption to a licensed adoption agency, if the child is placed in~~
35 ~~the care of prospective adoptive parents who have an approved~~
36 ~~adoption home study that meets the criteria established by the~~
37 ~~department for home studies conducted within the state.~~